

**L.A.R. Misc. 112 PETITIONS FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE VIRGIN ISLANDS**

112.1 Considerations Governing Review on Certiorari

(a) Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor.

The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered.

(1) The Supreme Court of the Virgin Islands has decided a question in a way that conflicts with applicable decisions of this court or the United States Supreme Court.

(2) The Supreme Court of the Virgin Islands has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory powers.

(3) The Supreme Court of the Virgin Islands has decided an important question of federal or territorial law that has not been, but should be, decided by this court.

(4) The Supreme Court of the Virgin Islands was without jurisdiction of the case, or where, because of disqualifications or other reason, the decision of the Supreme Court of the Virgin Islands lacks the concurrence of the required majority

of qualified non-recused judges.

(5) A petition for a writ of certiorari will rarely be granted when the asserted error consists of erroneous findings of fact or the misapplication of a properly stated rule of law. A petition for writ of certiorari with respect to any issue or any material fact that was omitted from or misstated in the opinion of the Supreme Court of the Virgin Islands will normally not be considered, unless the omission or misstatement was called to the attention of the Supreme Court of the Virgin Islands in a petition for rehearing. All other issues and facts may be presented in the petition for a writ of certiorari without the necessity of filing a petition for rehearing.

112.2 Petition for Writ of Certiorari - How Sought

(a) In both civil and criminal cases, a review of final decisions of the Supreme Court of the Virgin Islands may be sought pursuant to 48 U.S.C. § 1613 by filing a petition for a writ of certiorari with the Clerk of the United States Court of Appeals for the Third Circuit within thirty (30) days from the entry of judgment on the docket of the Supreme Court of the Virgin Islands.

(b) Unless a rule specifies a different procedure for a cross-petition for certiorari, the rules for a petition for certiorari apply to cross-petitions.

(c) Petitioner must file, with proof of service, an original and three copies of the petition for writ of certiorari. Petitioner must serve one copy of the petition for writ of certiorari on each of the parties to the proceedings in the Supreme Court of the Virgin Islands. When filing the petition, petitioner must pay the docketing fee, which shall be the same as the fees charged for an original proceeding such as a petition for writ of mandamus or petition for review of an agency order, in the Court of Appeals. Counsel for the petitioner must enter an appearance within ten days of case opening. Parties interested jointly or otherwise may file a joint petition. A petitioner not shown on the petition at the time of filing may not later join in that petition.

(d) A cross-petition for a writ of certiorari may be filed within twenty-one (21) days after the first petition was filed. When filing the cross-petition, cross-petitioner must pay the docketing fee. The cross-petitioner must serve one copy of the petition on each of the parties to the proceedings in the Supreme Court of the Virgin Islands.

(e) If a petition for rehearing of the final decision of the Supreme Court of the Virgin Islands is timely filed pursuant to the Rules of the Supreme Court of the Virgin Islands or if that court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time for filing the petition for writ of certiorari shall run from entry of the order denying the petition or, if rehearing is granted, from entry of the order on rehearing.

(f) A circuit judge, for good cause shown, may extend the time for filing a petition

for writ of certiorari or cross-petition for a period not exceeding sixty (60) days. Any application for extension of time within which to file a petition for writ of certiorari must set out the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons justifying an extension. An application for extension of time to file a petition for certiorari must be submitted at least ten (10) days before the specified final filing date and will not be granted, except in the most extraordinary circumstances, if filed less than ten (10) days before that date.

112.3. Denominating Parties

(a) The party petitioning for the writ of certiorari shall be denominated the petitioner; petitioner's denomination in the appeal or other proceeding before the Supreme Court and the Superior Court of the Virgin Islands must be included in the petition.

(b) All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties in this court and shall be denominated respondents, unless the petitioner notifies the clerk of this court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice must be served on all parties to the proceeding in the Supreme Court of the Virgin Islands. Parties noted as no longer interested may remain a party by notifying the clerk in writing within ten (10) days from the date of service of petitioner's notice, with service on

all other parties, that they have an interest in the petition. Each respondent's denomination in the proceedings before the Supreme Court and the Superior Court of the Virgin Islands must be included in the petition for writ of certiorari. Any respondent who supports the position of a petitioner must meet the time schedule for filing responsive papers.

112.4 The Petition for Writ of Certiorari

(a) The petition for writ of certiorari must contain, in the order here indicated:

(1) a table of contents;

(2) a table of authorities including citations to the constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves;

(3) a concise statement of the ground on which the jurisdiction of this court is invoked showing the date on which the judgment sought to be reviewed was entered, the date of any orders respecting rehearing, and, in the case of a cross-petition for a writ of certiorari, the date of the filing of the petition for a writ of certiorari;

(4) the questions presented for review, expressed concisely in relation to the circumstances of the case. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the court;

(5) A concise statement of the case containing the facts material to the consideration of the questions presented. The statement of the case must specify, with appropriate citation to the record, the stage in the proceedings, both in the Superior Court and the Supreme Court of the Virgin Islands, at which the questions sought to be reviewed were raised and the ruling thereon;

(6) a direct and concise argument amplifying the reasons relied on for the allowance of the writ;

(7) a short conclusion, which must include a statement of the specific relief requested if the writ of certiorari is granted.

(b) All contentions in support of a petition for writ of certiorari must be set forth in the body of the petition, as provided by this rule. No separate brief in support of a petition for a writ of certiorari will be received, and the clerk will refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

(c) Any reason for expedited treatment or request for interim relief must be made by separate motion. The requirement in Rule 8, F.R.A.P., that a request for stay or injunction pending appeal must first be made to the court below will be strictly enforced. Any motion for stay or injunction must attach the order of the Supreme Court of the Virgin Islands disposing of the motion for stay or injunction made to it in the first instance.

112.5 Appendix

(a) An original and three copies of an appendix must be filed with the petition.

The appendix must contain in the following order:

(1) copies of all docket entries, opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the Supreme Court of the Virgin Islands; and

(2) copies of any applicable local statutes, ordinances, and regulations

112.6 Brief in Opposition - Reply - Supplemental Briefs

(a) Within thirty (30) days of receipt of a petition for writ of certiorari, a respondent may file an original and three copies, with certificate of service, of an opposing brief.

(b) No motion by a respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant the writ of certiorari may be included in the brief in opposition.

(c) Petitioner may file an original and three copies, with certificate of service, of a reply brief addressed to arguments first raised in the brief in opposition within fourteen (14) days of receipt of respondent's brief.

(d) Motions for extensions of time to file a brief are governed by Third Circuit

L.A.R. 31.4

(e) No supplemental filings may be made by any party except as provided in Rule

28(j), F.R.A.P.

112.6 Format and Length

(a) The typeface, page size, margins, line spacing, binding, and text style of a petition for writ of certiorari and responses must be in compliance with Rule 32, F.R.A.P. and Third Circuit Local Rule 32. The cover of a petition for writ of certiorari must be blue; the cover of respondent's brief must be red; the cover of a reply brief must be gray.

(b) A proportionately spaced petition for a writ of certiorari and response must not exceed 5,600 words, exclusive of the table of contents and table of authorities. A reply brief must not exceed 2,300 words.

112.7 Disposition of a Petition for Writ of Certiorari

(a) The petition and any responses shall be referred to a motions panel for disposition. If a petition for writ of certiorari is granted, the clerk will issue a briefing schedule and the case shall proceed as other appeals.

112.8 Record on Review

(a) The record on review shall consist of the record presented to the Supreme Court of the Virgin Islands.

(b) Within thirty (30) days of an order granting a writ of certiorari, the Clerk of the Supreme Court of the Virgin Islands must file a certified copy of the docket entries in lieu of the record with the Clerk of the Court of Appeals. The filing of the certified docket entries with the Court of Appeals indicates that the Court of Appeals considers the record

filed.

112.9 Rehearings

(a) Rules 35 and 40, F.R.A.P. govern petitions for rehearing an order denying a petition for writ of certiorari.

(b) The grounds for a petition for rehearing of an order denying a petition for writ of certiorari are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. A petitioner must certify that the petition is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay. This certification is in lieu of that required by Third Circuit L.A.R. 35.1;

(c) No response to a petition for rehearing will be received unless requested by the court, but no petition will be granted without an opportunity to submit a response.

(d) Consecutive petitions for rehearings will not be received.

112.10 Costs

(a) Each side will bear its own costs in a proceeding seeking a writ of certiorari, unless the court either *sua sponte* or by motion directs that costs be taxed under Rule 38, F.R.A.P., for a vexatious or frivolous petition. If the writ is granted and the case proceeds to briefing and decision, costs may be taxed as in Rule 39, F.R.A.P.

112.11 Applicability of the Federal Rules of Appellate Procedure

(a) The Federal Rules of Appellate Procedure, to the extent that they are not

inconsistent with any statutory provisions or these rules, may be applied to a proceeding seeking a writ of certiorari.